

Decision No. 87749 AUG 23 1977

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of JOHN B. KELLY, JR.
and NANCY ANNE KELLY doing business
as LAKE ALMANOR WATER SUPPLY to sell
the interest of NANCY ANNE KELLY to
JOHN B. KELLY, JR. in the water
system along North and Northeast
shores of Lake Almanor, County of
Plumas and for incorporation of such
water system as LAKE ALMANOR WATER
SUPPLY, INC.

Application No. 57041
(Filed January 31, 1977)
(Amended June 6, 1977)

O P I N I O N

By this application John B. Kelly, Jr. and Nancy Anne Kelly, joint owners of Lake Almanor Water Supply, seek approval to sell the interest of Nancy Anne Kelly to John B. Kelly, Jr. and for incorporation of the water system as Lake Almanor Water Supply, Inc., with John B. Kelly, Jr. as sole shareholder and for Nancy Anne Kelly to be relieved of further public utility responsibilities in connection with the water utility.

John B. Kelly, Jr. and Nancy Anne Kelly were granted a Certificate of Public Convenience and Necessity by Decision No. 62828, dated November 21, 1961, in Application No. 43082. The utility is located in Plumas County, approximately three miles southwest of Westwood, along the northeastern shore of Lake Almanor. It serves 297 customers, of which 107 are metered and 190 are flat rate service, through 54,150 feet of mains varying in size from two- to six-inch diameters. The reported original cost of property being transferred, as shown on the utility's annual report for 1976, is \$104,191.60, depreciation reserve as of December 31, 1976 is \$44,650.89 and contributions in aid of construction are \$41,074.82, resulting in a net book cost of \$18,465.89. The applicants, using 1975 year report, arrived at a net book cost of \$62,136.47, not

taking into consideration the recorded contributions in aid of construction of \$32,632.27. The partnership interest, as determined from the annual report of 1976, is \$18,376.

The application was amended June 6, 1977 to include a certified copy of the Articles of Incorporation.

This transfer is necessitated by a dissolution of marriage of the parties. Under the terms of the Agreement for the Division of Community Property, attached to application, both Buyer and Seller agree coincident with the execution of said agreement to petition for approval of change of ownership and simultaneously for approval of the incorporation of the utility. Upon receipt of approval from the Commission for transfer of ownership and incorporation of the utility, the agreement will become effective.

The proposed transfer of ownership interest consists of the incorporation of the system as Lake Almanor Water Supply, Inc., and transfer of all land, easements, plant, water rights, buildings, equipment and any other appurtenant facilities used and usable in providing water service to the corporation, and of Seller transferring all of her interest in the water utility, including control, to the Buyer on the following terms: \$42,500 payment for one-half interest in the water utility, payable \$10,000 down and the balance of \$32,500 payable ratably over 20 years with 8% interest included at the rate of \$271.85 per month commencing December 31, 1976. The payment is covered by a personal note and is to be secured by a pledge of stock to be held in escrow until all monies due are paid in full. It is not considered that this personal note is a debt against the utility.

The verified application indicates that applicants would merely transfer their business to a corporation, after which John B. Kelly would become the sole stockholder upon his purchase of the interest of Nancy Anne Kelly.

Seller and Buyer jointly accept responsibility for informing the utility's customers about this transfer.

Seller and Buyer warrant that:

- a. There are no customers' deposits to establish credit, and
- b. Buyer agrees to pay refunds on main extensions (construction advances) when they fall due.

The articles of incorporation authorize the corporation to issue a total of 100,000 shares, all of one class with no par value and restricts holders of record to not more than ten persons. The applicants have not included a prayer to this Commission for authorization to issue stock, although the application and the Agreement for the Division of Community Property provide for the pledge of stock. The following paragraph is from the agreement.

"2. Wife hereby delivers to Husband as his sole and separate property, all shares held by Wife in the Lake Almanor Water Supply, Inc. Husband agrees and does coincident with the execution of this agreement, deliver such shares provided by Wife, along with all shares held by Husband to the Pledgee hereinafter referred to and subject to and pursuant to that Pledge Agreement executed concurrent with the execution of this agreement."

This order will therefore authorize the corporation to issue not to exceed 6,000 shares of common stock of no par value, in exchange for the net book value of the partnership equity, which amounted to \$18,376 on December 31, 1976, subject to payment of the prescribed fees.

After consideration, the Commission finds that:

1. The proposed transfer and incorporation of Lake Almanor Water Supply would not be adverse to the public interest.
2. The proposed stock issue is for a proper purpose. .

3. The money, property, or labor to be procured or paid for by the issue of the security herein authorized is reasonably required for the purpose specified herein, which purpose is not, in whole or in part, reasonably chargeable to operating expenses or income.

4. The requests should be granted. A public hearing is not necessary.

5. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

O R D E R

IT IS ORDERED that:

1. On or before December 1, 1977, Lake Almanor Water Supply, a regulated water utility, may transfer the water system and related assets referred to in the application to Lake Almanor Water Supply, Inc., a California corporation.

2. As a condition of this grant of authority, transferee shall assume the public utility obligations of transferor within the area served by the water system being transferred and shall assume liability for refunds of all existing customer deposits and advances pertaining to the water system being transferred. Transferee shall send notice of the assumption of liability for refunds to all customers affected.

3. Within ten days after completion of the transfer Lake Almanor Water Supply, Inc. shall notify the Commission, in writing, of the date of completion and of the assumption of the obligations set forth in paragraph 2 of this order.

4. Lake Almanor Water Supply, Inc. shall either file a statement adopting the tariffs of Lake Almanor Water Supply now on file with this Commission or refile under its own name those tariffs in accordance with the procedures prescribed by General Order No. 96-A. No increase in rates shall be made unless authorized by this Commission.

5. On or before the date of actual transfer, transferor shall deliver to transferee, and the latter shall receive and preserve all records, memoranda, and papers pertaining to the construction and operation of the water system authorized to be transferred.

6. Upon compliance with all of the terms and conditions of this order, seller shall be relieved of its public utility obligations in connection with the water system transferred.

7. John B. Kelly, Jr. may control Lake Almanor Water Supply, Inc.

8. On or before December 1, 1977, Mrs. Nancy Anne Kelly is authorized to sell, and Mr. John B. Kelly is authorized to buy, all of her interest in Lake Almanor Water Supply, Inc. under the terms and conditions as set forth in the application and the Agreement for the Division of Community Property.

9. Upon compliance with all the terms and conditions of this order, Nancy Anne Kelly shall be relieved of her public utility obligation in connection with Lake Almanor Water Supply, Inc.

10. On or after the effective date of this order and on or before December 1, 1977, Lake Almanor Water Supply, Inc. may issue not to exceed 6,000 shares of its common stock of no par value.

11. In issuing this decision we place the issuer of the authorized stock and its shareholders on notice that we do not regard the number of shares outstanding, the total stated value of the shares, nor the dividends paid, as measuring the return it should be allowed to earn on its investment in plant, and that this authorization is not to be construed as a finding of the value of the company's stock or property nor as indicative of amounts to be included in proceedings for the determination of just and reasonable rates.

12. The authority granted by this order to issue stock will become effective when the issuer has paid the fee prescribed by Section 1904.1 of the Public Utilities Code, which fee is \$38.00.

Except as limited in Ordering Paragraph 12, the effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 23rd day of AUGUST, 1977.

Robert Balcerin
President
William J. Quinn
Vernon L. Stenger
Richard D. Howell
Vain L. L. L. L.
Commissioners

